

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the Verizon Telephone Companies)	
For Forbearance Under 47 U.S.C. § 160 (c))	WC Docket No. 04-440
From Title II and Computer Inquiry Rules)	
With Respect to Their Broadband Services)	

**COMMENTS OF AT&T CORP. ON
PETITION FOR FORBEARANCE OF
THE VERIZON TELEPHONE COMPANIES**

Pursuant to the Commission's Public Notice in the above-captioned docket,¹ AT&T Corp. ("AT&T") hereby submits these Comments on the Petition of the Verizon Telephone Companies ("Verizon") seeking forbearance from enforcement of Title II common carriage requirements and the *Computer Inquiries* rules.²

DISCUSSION

Verizon's Petition seeks the essentially same forbearance relief requested by BellSouth Telecommunications, Inc. ("BellSouth") pursuant to BellSouth's recent petition for forbearance.³ Indeed, Verizon filed its Petition as a "me-too" attachment to its comments in support of

¹ See Public Notice, WC Docket No. 04-440 (December 23, 2004).

² *Petition of the Verizon Telephone Companies For Forbearance*, WC Docket No. 04-440, (filed December 20, 2004) (the "Petition").

³ *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Title II Common-Carriage Requirements*, WC Docket No. 04-405 (filed October 27, 2004) (the "BellSouth Petition").

BellSouth's request in the BellSouth forbearance docket.⁴ Thus, the Commission has a well-documented prior record on the issues Verizon raises in this proceeding.

In fact, Verizon's arguments are virtually identical to those made by BellSouth and other incumbent local exchange companies ("ILECs") in support of BellSouth's forbearance request. AT&T fully responded to each of those arguments in its opposition and reply comments in the BellSouth forbearance proceeding,⁵ and it hereby respectfully requests that its opposition and reply comments in that docket be incorporated into the record of this proceeding.

The only substantive argument Verizon raises in support of its Petition that AT&T has not already fully addressed concerns Verizon's claim regarding the effect of the Commission's *271 Forbearance Order*⁶ on the decision in this and other forbearance proceedings. As shown below, the *271 Forbearance Order* deals with a unique set of circumstances and certainly is not dispositive here. Indeed, the principles the Commission applied in that order are inconsistent with the forbearance relief sought here.

The *271 Forbearance Order* lifted some requirements for access to Bell Operating Company ("BOC") broadband *network elements* under section 271 of the Telecommunications Act. Notably, however, it did so only because access to network elements used to serve business

⁴ See Comments of Verizon, WC Docket No. 04-405 (filed December 20, 2004).

⁵ See Opposition of AT&T, WC Docket No. 04-405 (filed December 20, 2004); Reply Comments of AT&T, WC Docket No. 04-405 (filed January 28, 2005).

⁶ See Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), Memorandum and Order, WC Dkts. Nos. 01-338 et al. (rel. October 27, 2004) ("*271 Forbearance Order*"). AT&T has appealed the *271 Forbearance Order*. Petition for review pending, *AT&T Corp. v. FCC*, No. 04-5847 (2d Cir., filed November 5, 2004)(transferred to D.C. Cir. on January 28, 2005).

customers *would still be available* under section 251 of the Act.⁷ In contrast, if the instant Petition were granted, Verizon could claim an unfettered right to deny competitors access to last-mile broadband transmission facilities, or the right to offer any service that it did choose to provide as “private carriage,” on any rates, terms and conditions that it elected.

By its express terms, the *271 Forbearance Order* granted BOCs circumscribed forbearance relief from Section 271 unbundling requirements for (i) a limited set of new fiber network facilities (*i.e.*, fiber to the home (“FTTH”) loops, fiber to the curb (“FTTC”) loops, packetized functionality of hybrid loops, and packetized switching) that (ii) were otherwise required to be made available as Section 271 elements to (iii) requesting carriers that would use them to provide competing telecommunications services. *271 Forbearance Order*, ¶¶ 6, 21. Under the specific circumstances applicable to that forbearance request, including the potential disincentive effect of facilities unbundling on BOC investment in new fiber facilities, the Commission limited the requirement to unbundle those specific facilities *as network elements* under section 271. *Id.* ¶ 21. But that relief is far different from the relief sought here.

First, neither Title II nor the *Computer Inquiries* rules have anything to do with “unbundling”; rather, they set forth rules that have been applied to all common carriers and common carrier services for decades. These rules also serve a different purpose from the unbundling rules, which require incumbent LECs to provide access to network elements in order to assist in the development of competition among multiple suppliers of telecommunications services. In contrast, the Title II and *Computer Inquiries* rules have

⁷ *271 Forbearance Order*, ¶ 23 & n.68.

been developed and nurtured to insure that all common carriers -- not just dominant firms -- provide their telecommunications *services* in a just, reasonable and nondiscriminatory manner.

Critically, the non-discrimination obligations of Title II and the *Computer Inquiries* rules do not impose any costs that are related to the “unbundling of network elements” under section 271 (or 251) of the Telecommunications Act of 1996. In fact, these obligations long pre-date the 1996 Act, and the Commission has never lifted them from *any* carrier. Verizon offers insufficient reason why the Commission should take such unprecedented action here. Indeed, Commissioner Abernathy’s Statement accompanying the *271 Forbearance Order* expressly recognized that that order had *no* impact on the application of the Commission’s *Computer Inquiries* rules, which she noted were the subject of a separate inquiry. *See 271 Forbearance Order* (Statement of Commissioner Kathleen Q. Abernathy) (“[T]his grant of forbearance [of Section 271 unbundling obligations] is without prejudice to our ongoing proceeding regarding the *Computer Inquiry* non-discrimination provisions, so the Commission will have a full opportunity to determine the extent to which those separate requirements remain necessary.”)

Second, the statutory unbundling rules inure only to the benefit of “requesting carriers” as defined in the Telecommunications Act, while Title II and the *Computer Inquiries* rules provide protections for *all* purchasers of common carrier services, including non-affiliated ISPs and other non-affiliated providers of broadband services and applications. Thus, the protections of Title II and the *Computer Inquiries* rules, by their very nature, concern a much broader set of purchasers than the unbundling rules.

Third, decisions the Commission refers to in the *271 Forbearance Order* themselves recognize the importance of retaining the requirements that are embodied in the Title II and *Computer Inquiries* rules.⁸ In the *Advanced Services Forbearance Order*, for example, the Commission granted a BOC limited forbearance relief that permitted the BOC's structurally separate advanced services affiliate to offer certain advanced services without filing a formal tariff.⁹ But the Commission granted this relief only because, *inter alia*, (i) the BOC committed to maintain the structural separation of its advanced services affiliate, (ii) the BOC made additional commitments that ensured that non-affiliated ISPs and carriers would have non-discriminatory access to the basic transmission capabilities provided by the BOC to its affiliate, as required by the *Computer Inquiries* rules, and (iii) the advanced services affiliate would remain subject to the complaint process established by Section 208 of the Communications Act.¹⁰ Thus, the *Advanced Services Forbearance Order* re-affirms the Title II and *Computer Inquiries* obligations.

⁸ See, e.g., Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337, Memorandum Opinion and Order (the "*Advanced Services Forbearance Order*") 17 FCC Rcd 27000, 27009-13, ¶¶ 17-28 (2002).

⁹ See *id.* The Commission denied all other requested relief, including a request that the Commission declare the BOC non-dominant in the provision of advanced services. See *id.*

¹⁰ See *id.*

CONCLUSION

For the reasons set forth above, and in AT&T's opposition and reply comments to the BellSouth Petition, the Petition should be denied.

Respectfully submitted,

/s/ Clifford K. Williams
Clifford K. Williams

Leonard J. Cali
Lawrence J. Lafaro
Richard H. Rubin
Clifford K. Williams
AT&T Corp.
One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1847
Counsel for AT&T Corp.

February 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2005 I caused true and correct copies of the “Comments of AT&T Corp. on Petition for Forbearance of the Verizon Telephone Companies” via electronic mail on the parties listed on the attached service list.

Dated: February 8, 2005

/s/ Karen Kotula

Karen Kotula

SERVICE LIST

Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Suite-TW-B204
Washington, DC 20554
(filed electronically)

Janice M. Myles*
Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
445 12th Street, SW
Suite 5-C140
Washington, DC 20554
(janice.myles@fcc.gov)

Best Copy and Printing, Inc.*
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554
(fcc@bcpiweb.com)